

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CARLOS ALMONTE, et al.,

Plaintiffs,

-against-

PEST PRO SERVICES, INC., et al.,

Defendants.

-----X  
Gold, S., U.S. Magistrate Judge:

REPORT AND  
RECOMMENDATION  
13-CV-6034 (RRM)

Plaintiffs bring this action under the Fair Labor Standards Act. The parties have entered into a settlement agreement, and now ask that the Court approve the agreement as “a reasonable compromise of disputed issues [rather] than a mere waiver of statutory rights brought about by an employer's overreaching.” *Le v. SITA Information Networking Computing, USA, Inc.*, 2008 WL 724155, \*1 (E.D.N.Y. Mar. 13, 2008) (internal quotation marks and citation omitted); *see also Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir. 2015) (holding that “stipulated dismissals settling FLSA claims with prejudice require the approval of the district court”) .

Plaintiff has submitted a letter brief arguing that the settlement is reasonable and fair, as well as a copy of the settlement agreement. Docket Entry 82. The agreement provides for a total payment of \$32,000 in settlement, with \$17,954.01 payable to the three plaintiffs and \$14,045.99 payable to plaintiff's counsel as fees and costs. Counsel for plaintiffs represents that the amount plaintiffs will receive under the settlement exceeds the amounts they could recover as damages, including liquidated damages, at trial. Plaintiffs' counsel further represents that fees and costs incurred in litigating this action exceed the fees and costs provided by the settlement.

I have been the magistrate judge presiding over the pre-trial aspects of this case since December 29, 2014. I have conducted several conferences with counsel and the parties during that time. As a result, I am aware that the settlement was the result of arms-length negotiations between

the parties and their counsel. I am also aware that at least some of the defendants asserted defenses that might be successful at trial. Finally, as reflected in some of the more recent docket entries, I am aware that plaintiffs have encountered difficulty collecting a portion of the settlement proceeds, although the entire amount has now been paid.

In short, the settlement provides that plaintiffs will receive more than they could recover at trial. The attorney's fee portion of the settlement is less than the fees and costs actually and reasonably incurred. Some defendants have arguable defenses to plaintiffs' claims. Even if plaintiffs prevailed at trial, collection of any judgment rendered might be difficult, particularly if only certain defendants were held liable. I therefore respectfully recommend that the settlement be approved and that the case be dismissed with prejudice.

Any objections to the recommendations made in this Report must be filed within fourteen days of this Report and Recommendation and, in any event, on or before February 26, 2016. Failure to file timely objections may waive the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

/s/  
\_\_\_\_\_  
STEVEN M. GOLD  
United States Magistrate Judge

Brooklyn, New York  
February 9, 2016

U:\smg current docs\ALMONTE FLSA.docx